

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

HSK LLC, dba ZEROREZ MN,

Plaintiff,

Court File No. _____

v.

Eco Green Carpet Cleaning, Inc.,

Defendant

**COMPLAINT
and
DEMAND FOR JURY TRIAL**

Plaintiff HSK LLC, for its complaint against Eco Green Carpet Cleaning alleges as follows:

PARTIES

1. Plaintiff is a Minnesota limited liability company, and as a Zerorez® franchisee, holds the assumed name ZEROREZ. Its principal place of business is at 5320 W. 23rd Street, Suite 100, St. Louis Park, Minnesota.

2. Defendant is a Minnesota corporation with a registered office address of 19400 Normandale Road, Prior Lake, Minnesota.

JURISDICTION AND VENUE

3. This is an action for copyright infringement under 17 U.S.C. §§ 501 and 504, violation of the Lanham Act, 15 U.S.C. § 1125, and violation of Minn. Stat. §§ 325D.13, 325D.44 and 325E.41. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 and 1367.

4. Venue is proper in this District under 28 U.S.C. § 1391(a) because the events giving rise to Plaintiff's claims occurred in the District.

ZEROREZ

5. ZEROREZ, has operated since 2005 in the Twin Cities metro area. It came under new ownership in 2006, and over the course of the last nine years, has become the most recognized name in the Twin Cities carpet cleaning industry.

6. As a result of ZEROREZ's marketing and advertising campaigns, as well as its high-quality services and products, ZEROREZ's market share has increased from approximately 3 percent in 2006 to approximately 20 percent.

7. Today, ZEROREZ is the largest carpet cleaning company in Minnesota history and among only a few of its size in the world.

8. Carpet cleaners do not and cannot extract all the product introduced into the carpet they clean, so cleaners that use traditional cleaning chemistry and products leave a chemical residue which causes accelerated carpet wear and fiber re-soiling. The Zerorez® cleaning process does not clean with products that leave dirt-attracting residue.

9. The Zerorez® cleaning process is also unlike standard steam cleaning methods. ZEROREZ uses water softened and electrolyzed using the patented EO Water System. This system uses electrolyzed alkaline water and

unique equipment to apply and remove the solution. The process is patented, and only Zerorez and its franchisees – including Plaintiff – are licensed to use it for carpet cleaning.

10. Since 2005, ZEROREZ has pursued an aggressive advertising and consumer education marketing campaign focused on teaching the difference between its cleaning process and traditional hot water extraction carpet cleaning.

11. "Residue" has become the buzzword in the Twin Cities carpet cleaning market, and ZEROREZ created the buzz. ZEROREZ's proprietary chemistry and advanced cleaning equipment received the industry's highest platinum rating for cleaning efficacy from the Carpet and Rug Institute, the leading science-based testing and certification standards organization in the carpet cleaning industry.

12. ZEROREZ has received recognition for providing one of the best workplaces in Minnesota, customer satisfaction awards, and is the clear local-market leader in the industry.

13. ZEROREZ maintains a website at www.zerorezmn.com and www.zerorezminnesota.com, which it uses as part of its ongoing marketing efforts. A copyright in the content at issue in this litigation was registered with the Copyright Office effective July 28, 2015. The Registration Number is TX 9-057-277.

ECO GREEN

14. Eco Green is a ZEROREZ competitor, also offering carpet-cleaning services in the Twin Cities area.

15. Eco Green also markets its services online, at www.ecogreenmn.com.

ECO GREEN'S COPYRIGHT INFRINGEMENT

16. On information and belief, in early 2015 Eco Green updated its website, posting a "Services" page that was a nearly word-for-word copy of content from the ZEROREZ website.

17. Examples of Eco Green's copying include:

ZEROREZ COPYRIGHTED CONTENT	ECO GREEN CONTENT
A healthy environment starts with clean carpets, the biggest air filter in your home. Nothing cleans more thoroughly or protects your family better than ZEROREZ®	A healthy environment starts with clean carpets, the biggest air filter in your home. Nothing cleans more thoroughly or protects your family better than Eco Green Cleaning.
The ZEROREZ® carpet cleaning system is designed to solve the industry's top concerns:	The Eco Green carpet cleaning system is designed to solve the industry's top concerns:
Safer, Cleaner, Greener: Our patented "Empowered Water™" does not contain any harsh soaps, shampoos or detergents; therefore it is safe for pets and kids.	Safer, Cleaner, Greener: Our patented "Citrapowered Water™" does not contain any harsh soaps, shampoos or detergents; therefore it is safe for pets and kids.
Trained Service Technicians: We hire only the best, and ensure our	Trained Service Technicians: We hire only the best, and ensure our

technicians are properly trained, certified, friendly, on time, clean cut, and in uniform.	technicians are properly trained, certified, friendly, on time, clean cut, and in uniform.
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18. Eco Green used the content copied from ZEROREZ on its website through the end of September 2015.

ECO GREEN'S FALSE CLAIMS

19. Eco Green states on its website that it uses “Citrapowered Water” for its carpet cleaning services. Until the end of September 2015, the Eco Green website’s FAQ page defined “Citrapowered Water” as “water that has been softened and electrolyzed with our patented EO Water System.” It goes on to assert that “Only Eco Green has the exclusive patented rights to clean with this technology in the carpet cleaning industry!”

20. Eco Green’s claims about its use of the EO Water System were literally false. It has never been licensed to use the EO Water System at all; it certainly does not have the “exclusive patented rights” to use the EO Water System technology. Those rights are held exclusively by Zerorez and its franchisees, including Plaintiff.

21. Eco Green’s definition of “Citrapowered Water” was, in fact, a nearly word-for-word copy of the definition of “Empowered Water” on the FAQ page on the ZEROREZ website. The only change was the replacement of “Empowered” with “Citrapowered.”

22. On information and belief, Eco Green does not use, and has never used, electrolyzed water in its carpet cleaning. It did not use the technology ZEROREZ employs to clean carpets; it merely copied ZEROREZ's description of that technology to sell carpet-cleaning services that use untreated hot water.

23. Eco Green's website, by falsely stating that the company used electrolyzed water, capitalized on the market for residue-free cleaning that has been largely built up by ZEROREZ's work and its marketing. The false statements are likely to confuse consumers and to cause them to purchase Eco Green's services in the mistaken belief that they are the same as ZEROREZ's.

24. The Eco Green website's i) reference to the company's "Floor Cleaning with Eco Superpowers"; ii) headline stating "The healthier and safer way to clean – Eco Green"; and iii) statement that its "revolutionary cleaning system" is "environmentally safe"; falsely imply that the company's service provides ecological or environmental benefits.

**COUNT I
COPYRIGHT INFRINGEMENT
17 U.S.C. § 501 ET. CET.**

25. ZEROREZ authored and owns the copyright in the text posted on the "Services" page of its website.

26. ZEROREZ's copyright is registered with the Copyright Office.

27. The “Services” page on Eco Green’s website infringed on ZEROREZ’s copyright by copying that text nearly word-for-word and displaying the text on www.ecogreenmn.com.

28. ZEROREZ has sustained damages from Eco Green’s infringement of its copyright, in an amount to be determined at trial.

29. Eco Green has earned revenue from its infringement of the ZEROREZ copyright. On information and belief, Eco Green had monthly revenue of approximately \$25,000. That revenue should be disgorged and paid over to ZEROREZ pursuant to 17 U.S.C. § 504(b).

COUNT II
FALSE STATEMENTS IN ADVERTISING
15 U.S.C. § 1125(A)(1)

30. Eco Green’s statement that it used “water that has been softened and electrolyzed with our patented EO Water System” was a literally false or misleading description of fact, or false or misleading representation of fact in commercial advertising that misrepresented the nature, characteristics or qualities of Eco Green’s carpet cleaning services, in violation of 15 U.S.C. § 1125(a)(1)(B). Eco Green does not use, and has never used, water treated by the EO Water System.

31. Eco Green’s statement that “Only Eco Green has the exclusive patented rights to clean with this technology in the carpet cleaning industry!” was a literally false or misleading description of fact, or false or misleading

representation of fact that was likely to cause confusion or mistake, or to deceive consumers as to Eco Green's affiliation, connection or association with ZEROREZ, in violation of 15 U.S.C. § 1125(a)(1)(A). By claiming that it had the right to use the EO Water System, Eco Green implied that it is affiliated, connected or associated with ZEROREZ – the only Minnesota company to actually have the right to use the EO Water System.

32. Alternatively, Eco Green's statement that "Only Eco Green has the exclusive patented rights to clean with this technology in the carpet cleaning industry!" was a literally false or misleading description of fact, or false or misleading representation of fact that was likely to cause confusion or mistake regarding the commercial activities of ZEROREZ, in violation of 15 U.S.C. § 1125(a)(1)(A). By claiming to hold the exclusive right to use the EO Water System technology, Eco Green falsely implied to consumers that ZEROREZ does not have the right to use, or does not use, the technology.

33. ZEROREZ has sustained damages as a result of Eco Green's false statements, in an amount to be determined at trial.

34. Eco Green has earned profits by making false statement in advertising, in violation of 15 U.S.C. § 1125. Such profits are recoverable as actual damages under 15 U.S.C. § 1117(a).

35. Eco Green only removed the false references to the EO Water System technology from its website when it was presented with a draft

complaint. As a direct result of Eco Green's violations of 15 U.S.C. § 1125, ZEROEZ has sustained and – if Eco Green chooses to resume the false statements – will again sustain substantial, immediate, and irreparable injury, for which there may be no adequate remedy at law, including the loss of consumer goodwill. ZEROEZ is entitled to temporary and permanent injunctive relief.

**COUNT III:
MINN. STAT. § 325D.13**

36. Eco Green falsely claimed on its website that it used electrolyzed water created by the patented EO Water System. Eco Green has never used the EO Water System.

37. By telling customers or potential customers that it used the EO Water System, Eco Green knowingly misrepresented the true quality of its merchandise in violation of Minn. Stat. § 325D.13.

38. Eco Green's violations of Minn. Stat. § 325D.13 threatened or caused injury to ZEROEZ because those violations a) prevented customers who are seeking carpet cleaning services that use electrolyzed water from hiring ZEROEZ; and b) confused consumers who hire Eco Green into believing they have received services that are exactly the same as the services ZEROEZ provides, damaging ZEROEZ's reputation and goodwill.

39. Under § 325D.15, ZEROEZ seeks an injunction barring Eco Green from telling consumers that it uses electrolyzed water or the EO Water System.

40. Under § 325D.15, ZEROEZ also seeks an award of actual damages for the losses it has sustained as a result of Eco Green's violations of § 325D.13, in an amount to be determined at trial.

41. Because Eco Green's conduct was directed to consumers at large, and so harms the public, ZEROEZ also is entitled to an award of attorney fees under § 8.31 subd. 3a.

**COUNT IV
DECEPTIVE TRADE PRACTICES
ENVIRONMENTAL MARKETING CLAIMS
MINN. STAT. § 325E.41**

42. Eco Green makes environmental marketing claims on its website. Those claims include: i) reference to the company's "Floor Cleaning with Eco Superpowers"; ii) a headline stating "The healthier and safer way to clean – Eco Green"; and iii) a statement that its "revolutionary cleaning system" is "environmentally safe."

43. These statements falsely imply that the company's service provides ecological or environmental benefits. The statements do not conform to the standards in C.F.R Title 16, Part 260, "Guides for the Use of Environmental Marketing Claims," and so violate Minn. Stat. § 325E.41 subd. 1.

44. Eco Green's false statements are made in advertising to the general public.

45. ZEROREZ has been harmed, or may sustain losses, as a result of Eco Green's false statements. Pursuant to Minn. Stat. § 8.31 subd. 3a and § 325E.41, it is entitled to an award of damages, equitable relief, and attorney fees.

Based on the above, Plaintiff respectfully requests that the Court enter judgment:

1. Awarding Plaintiff as damages for copyright infringement under 17 U.S.C. § 504(b), Eco Green's gross revenue during the period in which it infringed on Plaintiff's copyright.
2. Awarding Plaintiff damages for Defendant's false statements in advertising, under 15 U.S.C. § 1117(a) and Minn. Stat. §§ 325D.15 and 325E.41, in an amount to be determined at trial.
3. Temporarily and permanently enjoining Defendant from copying and displaying content from Plaintiff's website.
4. Temporarily and permanently enjoining Defendant from claiming in marketing materials that it uses electrolyzed water, or that it uses water treated through the EO Water System.
5. Awarding Plaintiff its reasonable attorney fees, costs and expenses.

6. Granting such other relief as the Court deems just and equitable.

Dated: November 23, 2015

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